

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Lynchburg Division

JERRY L. FALWELL, JR.,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civil Action No. 6:23cv00011
)	
LIBERTY UNIVERSITY, INC., <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
)	
LIBERTY UNIVERSITY, INC.,)	
)	
<i>Counterclaim Plaintiff,</i>)	
)	
v.)	
)	
JERRY L. FALWELL, JR.,)	
)	
<i>Counterclaim Defendant,</i>)	
)	

ORDER

Plaintiff and Counterclaim Defendant, Jerry L. Falwell, Jr. (“**Mr. Falwell**”), seeks to dismiss voluntarily, pursuant to F.R.C.P. 41(a)(2), Count II of his Complaint (“**Motion**”) against Defendant and Counterclaim Plaintiff, Liberty University, Inc. (“**Liberty**”), and against Defendant, the Executive Committee of the Board of Trustees for Liberty University, Inc. (“**Executive Committee**”).

On March 3, 2023, Mr. Falwell filed his two-count Complaint in this action against Liberty and the Executive Committee, alleging that Liberty and the Executive Committee injured Mr. Falwell in denying him benefits under his university-sponsored Supplemental Employee Retirement Plan (“**SERP**”). In Count I, Mr. Falwell asserted a claim under the Employee

Retirement Income Security Act (“**ERISA**”) for benefits wrongly denied. (Complaint., ECF 1). In Count II, Mr. Falwell asserted a claim, in the alternative, for breach of contract. *Id.*

On April 4, 2023, Liberty filed its Motion to Stay or Dismiss, Motion to Dismiss, and Motion for Partial Summary Judgment (“**Motion to Dismiss**”). In the Motion to Dismiss, Liberty moved the Court to dismiss Count II of the Complaint, arguing that it was “based on and relates to an employee welfare benefit plan governed by [ERISA]. As such ERISA preempts this claim, and Plaintiff’s state law claim must be dismissed.” (Motion to Dismiss, ECF 8, at 1).

On April 18, 2023, Mr. Falwell filed his Memorandum in Opposition to Liberty’s Motion to Dismiss (“**Opposition**”). In his Opposition, Mr. Falwell agreed to dismiss Count II voluntarily, noting that Liberty did not dispute the applicability of ERISA to the SERP. (Opposition, ECF 11, at 1).

In the Court’s Memorandum Opinion and Order (“**Order**”) following the hearing on Liberty’s Motion to Dismiss, the Court noted in a footnote that Mr. Falwell had agreed to dismiss Count II of the Complaint. (Order, ECF 25 at 5, n.5).

While Mr. Falwell effectively abandoned Count II of the Complaint, he did not formally dismiss the count. Because Liberty has filed its Answer, Mr. Falwell may voluntarily dismiss Count II upon entry of an order of this Court. F.R.C.P. 41(a)(2).

Neither Liberty nor the Executive Committee objects to entry of an order dismissing Count II of Mr. Falwell’s Complaint pursuant to Rule 41, and have consented to such dismissal.

Based on the foregoing, I will **GRANT** Mr. Falwell’s motion to dismiss Count II of his Complaint.

It is **SO ORDERED**.

ENTERED February ____, 2024

Robert S. Ballou
United States District Judge

WE ASK FOR THIS:

/s/ Vernon E. Inge, Jr.
Counsel

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Counsel for Plaintiff, Jerry L. Falwell, Jr.

SEEN AND AGREED:

/s/ Scott C. Oostdyk (via e-mail permission dated 2/7/2024)
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for Liberty University, Inc.*